IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7378 OF 2006

The Shamrao Vithal Co-op. Bank Ltd. Pune. ... Petitioners

Vs.

Union of India & 3 Ors. ... Respondents

Mr. D.J. Bhanage for the petitioner.

Mr. G. Hariharan with Mr. N.R. Prajapati i/b H.D. Rathod for respondent 1.

Mr. H.V. Mehta for respondent 2.

CORAM : SMT. RANJANA DESAI &
SMT. ROSHAN DALVI, JJ.

DATED : NOVEMBER 30, 2007.

P.C.:-

1. This petition is filed by Shamrao Vithal Co-op. Bank Ltd., Pune, praying that the proclamation of sale dated 22/9/2006 issued by respondent 2 i.e. Recovery Officer, Employees State Insurance Corporation in respect of the moveable and immoveable properties belonging to respondent 4 - M/s. Super Auto Industries be quashed and set aside.

2. On 13/11/2006, this court had issued notice to the respondents and granted ad-interim relief in terms of prayer clause (b) of the petition. By reason of this order, the proclamation of sale is stayed pending the hearing and final disposal of this petition.

3. We have heard learned counsel for the petitioners and learned counsel for the respondents.

4. Undisputed facts are that respondent 4 has executed a Deed of Hypothecation of its moveable and immoveable properties on 12/1/2001 and has deposited title deeds of the said properties with the petitioner-bank. Since respondent 4 was in arrears of Rs.15,51,022/- towards contribution payable by it under the Employees State Insurance Act, 1948 to respondent 2, respondent 2 had by proclamation dated 22/9/2006 proposed the auction/sale of the said properties for recovery of Rs.16,15,550/- inclusive of interest upto 22/9/2006 from respondent 4. Admittedly, respondent 4 has deposited an amount of Rs.5.65 lacs with respondent 3-Corporation.

5. We are informed by learned counsel for the petitioners that the petitioner is willing to pay respondent 3-Corporation an amount of Rs.10,50,550/- being the amount mentioned in the proclamation. He states that a proper undertaking to that effect will be filed in this court by Mr. Rajadhyaksha, Divisional Manager, Legal & Recovery Branch of the petitioners.

6. Learned counsel for respondents 2 and 3 states that under section 39(5) of the Employees State Insurance Act, 1948, respondents 2 and 3 are entitled to interest on the said amount. He says that respondents 2 and 3 are willing to accept the amount of Rs.10,50,550/- from the petitioner-bank provided they are permitted to recover the arrears of interest for the period after 22/9/2006 till the date of payment, from respondent 4 in accordance with law, from the properties of respondent 4, which are not the subject matter of this petition or by any other means permissible in law.

7. In view of the above statements made by the counsel which we have accepted, we pass the following order :

8. The petitioners shall pay an amount of Rs.10,50,550/- within a period of seven months from today to respondents 2 and 3. The petitioners shall file Undertaking of Mr. Rajadhyaksha, the Divisional Manager of the petitioner-bank in this court in terms of draft Undertaking which is tendered in this court, within one week from today.

9. Respondents 2 and 3 will be free to recover interest for the period after 22/9/2006 as per section 39(5) of the Employees State Insurance Act, 1948 from respondent 4 in accordance with law and, if necessary, by proceeding against any properties of respondent 4 except the properties which are the subject matter of this petition. We make it clear that on the petitioners paying respondents 2 and 3 an amount of Rs.10,50,550/- as stated in the Undertaking, the proclamation of sale dated 22/9/2006 shall stand set aside. The petition is disposed of.

[SMT. RANJANA DESAI, J.]

[SMT. ROSHAN DALVI, J.]